IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Ratan Lal. Versus State of Rajasthan.

S.B. Criminal Appeal No. 324/2003

and

Kishan Lal. Versus State of Rajasthan.

S.B. Criminal Appeal No. 213/2003.

Both the appeals against the judgment and order dated 6-2-2003 passed by the Special Judge, NDPS Cases, Bhilwara, in Sessions Case No. 11/2002.

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Date of Judgment: May 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Anil Kaviraj, for the appellants.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:
Reportable.

Both the criminal appeals under Section 374 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) are directed against the judgment and order dated 6-2-2003 passed by the Special Judge, NDPS Cases, Bhilwara (for short, "the trial Court" hereinafter) in Sessions Case No. 11/2002, whereby the trial Court convicted appellant Ratan Lal in Appeal No. 324/2003 for the offence under Section 8 read

with Section 21 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act" hereinafter), as amended by the NDPS Amendment Act of 2001 and sentenced him to undergo ten years' rigorous imprisonment and a fine of Rs. 1,00,000/-, in default of payment of fine further to undergo simple imprisonment for one year. Appellant Kishan Lal in Appeal No. 213/2003 was convicted for the offence under Section 8 read with Section 21 (B) of the NDPS Act, as amended by the NDPS Amendment Act, 2001 and sentenced to undergo nine years' rigorous imprisonment and a fine of Rs.80,000/-, in default of payment of fine further to undergo eight months' simple imprisonment. Aggrieved by the judgment and order impugned, both the appellants have filed these two appeals.

Both the appeals arise out of the common judgment and order and, therefore, are heard together and being decided by this common judgment.

I have heard learned counsel for the appellants and the Public Prosecutor for the State. Carefully gone through the judgment and order impugned, as also the record of the trial Court.

It is contended by the learned counsel for the appellants that the seizure officer PW 1 Phule Khan, Sub-Inspector, at the time of search and seizure, was posted as the Station House Officer of the Police Station and thus the search

and seizure were made by an unauthorized person and, therefore, the conviction of both the appellants vitiates. It has further been contended that both the Motbir witnesses have not supported the prosecution case and, therefore, the conviction of the appellants cannot be based on the sole statements of the police witnesses. Learned counsel further contended that the provisions of Section 50 of the NDPS Act have not been complied with to the extent that the appellants were not apprised of their legal right to be searched in the presence of a magistrate or a gazetted officer. Lastly, it has been contended that the provisions of Sections 42 and 57 of the NDPS Act have not been complied with.

Learned Public Prosecutor appearing for the State supported the judgment and order impugned and contended that PW 1 Phule Khan, Sub-Inspector, was the Incharge of the Police Station on the relevant date of search and seizure in absence of the regular Station House Officer, who, on the relevant date, was on leave and, therefore, PW 1 Phule Khan was an authorized officer to make search and seizure. Learned Public Prosecutor further submits that even if the Motbirs have not supported the prosecution case, the prosecution has proved its case beyond reasonable doubt from the evidence of the seizure officer PW 1 Phule Khan as also from the statements of other witnesses, viz. PW 10 Satya Narain Ojha, PW 11 Dinesh Kumar Constable, PW

12 Kamlesh Kumar Constable and PW 13 Pradeep Singh, Sub Inspector. Learned Public Prosecutor further submits that from the statements of PW 1 Phule Khan, PW 9 Ramesh Chandra and PW 15 Narendra Jain, it has been established that on the relevant date of the occurrence, the Circle Officer, who was the regular Station House Officer of Police Station, Subhash Nagar, Bhilwara, was on leave and in his absence, PW 1 Phule Khan, Sub-Inspector, was the Incharge of that police station and while acting as the Incharge and Station House Officer of the Police Station, he conducted the search and seizure and, therefore, the search and seizure were made by an authorized officer. Public Prosecutor further submits that the conviction of the appellants can be sustained on the statements of the witnesses noticed above, may be that they are police witnesses. He has relied on the decision of the Hon'ble Supreme Court in P.P. Fathima Vs. State of Kerala, JT 2003 (8) SC 527.

Learned counsel for the appellants has relied on the decisions of the Hon'ble Supreme Court in Saiyad Mohd. Saiyad Umar Saiyed & ors. Vs. State of Gujarat, 1995 Cr.L.R. (SC) 266; Bahadur Singh Vs. State of Madhya Pradesh & Anr., AIR 2002 SC 289; State of Punjab Vs. Balbir Singh, AIR 1994 SC 1872; and Jagdish Vs. State of Madhya Pradesh, AIR 2002 SC 2540.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

Carefully scrutinized, scanned and evaluated the evidence on record.

So far as contention of the learned counsel for the appellants that PW 1 Phule Khan was not the officer authorized to conduct search and seizure is concerned, the Officer-in-Charge of the Police Station has been defined in Section 2 (o) of the Code, which provides that Officer-in-Charge of a police station includes, when the officer-in-charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of Constable or, when the State Government so directs, any other police officer so present.

Rule 3 of the Rajasthan Police Rules, 1965 provides as under:-

> "Officer Incharge of Police Station.- (1) The Officer incharge of a police station is ordinarily a Sub-Inspector. Within the limits of the Police Station Jurisdiction, the Sub-Inspector is primarily responsible for the effective working, management, good conduct and discipline of the local police, for the preservation of peace and the prevention and detection of crime, the due performance of all police duties, the exercise by the police of the powers granted them by law, the correctness of all registers, records and reports prepared by them, and the direction, instructions and efficiency of all police subordinates in the station jurisdiction and matters for which the officer incharge of a police station is essentially answerable."

From a bare reading of the definition of "Officer Incharge of a Police Station", as envisaged under Section 2 (o) of the Code, it is clear that when the officer-in-charge of the police station is absent from the station-house, the officer present at the station-house who is next in rank and is above the rank of Constable, on charge being handed over to him, is the Incharge of the Station House. Therefore, for all practical purposes, he enjoys and exercises the powers of the Station House Officer.

A Notification S.O. 115 dated 16-10-1986 was issued by the State Government in exercise of the power under Section 42 of the NDPS Act, which provides that in exercise of the power conferred by Section 42 of the NDPS Act (Act No.61 of 1985), the State Government hereby authorize all Inspectors of Police and Sub-Inspectors of Police, posted as Station House Officers, to exercise the powers mentioned in Section 42 of the said Act with immediate effect. The proviso to the said Notification further provides that when power is exercised by the Police Officer other than Police Inspector of the area concerned, such officer shall immediately hand over the person arrested and articles seized to the concerned Police Inspector or S.H.O. Of the police station concerned. In the instant cases, as noticed above, PW 1 Phule Khan, on the relevant date of search and seizure, i.e. 8-3-2002, was the Incharge of the Police Station ad defined under Section 2 (o) of the Code and Section 3 (1) of the

Rajasthan Police Rules, 1965, and, therefore, for all practical purposes, on the relevant date, PW 1 Phule Khan was the Station House Officer of the police station.

In State of Himachal Pradesh Vs. Pirthi Chand, AIR 1996 SC 966, the Hon'ble Supreme Court held that the evidence collected in a search in violation of law does not become inadmissible in evidence under the Evidence Act. The consequence would be that evidence discovered would be to prove unlawful possession of the contraband under the Act. It is founded in Panchanama to seize the contraband from the possession of the suspect/accused. Though the search may be illegal but the evidence collected, i.e. Panchnama etc. nonetheless would be admissible at the trial.

In the instant case, PW 1 Phule Khan, the seizure officer, stated that on 8-3-2002 he was the Incharge of the Police Station, Subhash Nagar, Bhilwara as the regular Station House Officer/Circle Officer Umed Singh was on leave. His statement further finds support from the Roznamcha-Rupat and the statement of PW 15 Narendra Jain. PW 15 Narendra Jain stated that on 8-3-2002, Sub-Inspector PW 1 Phule Khan was the Incharge of the Police Station as the Circle Officer was on leave. After search and seizure made by PW 1 Phule Khan in the presence of PW 10 Satya Narain Ojha, PW 11 Dinesh Kumar Constable, PW 12 Kamlesh Kumar Constable and PW 13 Pradeep

Singh Sub-Inspector, the investigation of the case was handed over to PW 9 Ramesh Chandra, who too was a Sub-Inspector posted at the Police Station, City Kotwali, Bhilwara and Incharge of that police station, who too was on leave and the subsequent investigation was carried out by PW 9 Ramesh Chandra. From the statement of PW 9 Ramesh Chandra, it is established that after the search and seizure were made and the appellants were arrested along with the contraband smack and other materials including Panchnama etc., the investigation was handed over to PW 9 Ramesh Chandra, who, in turn, conducted the subsequent investigation and, therefore, from th evidence on record, it has been established beyond reasonable doubt that PW 1 Phule Khan was next in rank to the SHO at Police Station, Subhash Nagar, Bhilwara and the regular SHO Mr. Umed Singh was on leave and therefore the charge of that police station was handed over to PW 1 Phule Khan and on the relevant date, PW 1 Phule Khan was the Incharge of the Police Station as defined under Section 2 (o) of the Code and the power which he was exercising was conferred under rule 3 (1) of the Rajasthan Police Rules, 1965 and, therefore, PW 1 Phule Khan was an Authorized Officer to make search and seizure and the search and seizure made by him do not suffer from any error or illegality.

PW 2 Kana Jat and PW 4 Dharam Das Sindhi are the Motbirs of the recovery. Though they turned hostile but they

have admitted their signatures on various Furds, including the notice to them EX.P/3 to become Motbirs, their consent, the notices under Section 50 of the NDPS Act to appellant Ratan Lal EX.P/4 and to appellant Kishan Lal EX.P/5, the seizure memos EX.P/6 and EX.P/7 from appellants Ratan Lal and Kishan Lal respectively. Now-a-days, it is very common that Motbirs are not consistent to their previous statements and may not support the prosecution case, but the presence of police officials, who conducted search and seizure, cannot be doubted. There are as many as four to five police witnesses, in whose presence the search and seizure were made and the contraband smack (heroin) was recovered. Merely because they are the police witnesses, the prosecution case cannot be thrown on this ground alone. In P.P. Fatima Vs. State of Kerala (Supra), the Hon'ble Supreme Court held that it has been repeatedly held that the mere fact that a Panch witness does not support the prosecution case by itself would not make the prosecution case any less acceptable if otherwise the Court is satisfied from the material on record and from the evidence of the seizing authority that such seizure was genuinely made. In that case, the Court satisfied that from the evidence of PWs 1 and 2 the seizure has ben proved by the prosecution and, therefore, the argument raised by the counsel for the appellant therein failed.

So far as compliance of Section 42 of the NDPS Act

is concerned, PW 1 Phule Khan stated that on 8-3-2002, at about 11:00 AM, he received a secret information that both the appellants, on a Suzuki Motorcycle No. RJ.06-4M-9261, were coming from village Sanganer to Bhilwara carrying smack. The secret information was found reliable and written down in the Roznamcha vide EX.P/1, a carbon copy of which is EX.P/2 and was sent to the higher officers i.e. Superintendent of Police and the Circle Officer, through Constable PW 12 Kamlesh Kumar. PW 12 Kamlesh Kumar, Constable, stated that on 8-3-2002, the Incharge of the Police Station PW 1 Phule Khan gave a secret information at 11:00 AM that two persons, viz. Appellants Ratan Lal and Kishan Lal, are coming from Sanganer on a Suzuki motorcycle bearing No. RJ.06-4M-9261. The information was written down in the Roznamcha and copies of the information were sent to the Superintendent of Police and the Circle Officer, City, Bhilwara, through him. He started from the police station at about 11:15 AM, reached to the Superintendent of Police Mr. Sri Niwas Junga and the Circle Officer Rajendra Verma and handed over EX.P/2. EX.P/2 bears the signatures of the receiving officer marking the date and time as 11:25 AM on 8-3-2002. From the statement of PW 1 Phule Khan, the seizure officer and PW 12 Kamlesh Kumar Constable, it has been proved beyond reasonable doubt that the provisions of Section 42 of the NDPS Act have been fully complied with.

So far as compliance of provisions of Section 57 of the NDPS Act is concerned, though the compliance of this Section is not mandatory in nature, however, from the statement of PW 1 Phule Khan, it has been proved that vide EX.P/11, a detailed report of search, seizure and arrest was sent to the Superintendent of Police, Bhilwara vide EX.P/15, which was received on the very day, i.e. 8-3-2002 by the Superintendent of Police. The signature of the Superintendent of Police C to D on EX.P/11 has been proved. Thus, there is full compliance of the provisions of Section 57 of the NDPS Act also.

So far as the contention of the learned counsel for the appellants in respect of compliance of Section 50 of the NDPS Act is concerned, PW 1 Phule Khan stated that the notices under Section 50 of the NDPS Act, EX.P/4 and EX.P/5, were given to the appellants Ratan Lal and Kishan Lal respectively, apprising that their search may be carried out by a magistrate or a gazetted officer or PW 1 Phule Khan himself. Both the appellants gave their consent that they be searched by PW 1 Phule Khan, the seizure officer. Notices EX.P/4 and EX.P/5 served on appellants Ratan Lal and Kishan Lal respectively, clearly show that both the appellants were apprised regarding the secret information that the appellants were in possession of contraband smack and, therefore, they were informed that they have a legal right for their personal search to be carried out in

the presence of a magistrate or a gazetted officer and if they wish, they may be searched by PW 1 Phule Khan, the seizure officer, himself. Both the appellants stated in writing that they do not want that their personal search be carried out in the presence of a magistrate or a gazetted officer and gave consent that their personal search be carried out by PW 1 Phule Khan himself. The statement of PW 1 Phule Khan further finds support from the statements of other prosecution witnesses who were witnesses to the recoveries. Thus, it has been established beyond reasonable doubt that both the appellants, vide EX.P.4 and EX.P/5, were apprised of their legal right to be searched in the presence of a magistrate or a gazetted officer but they exercised their option to be searched by PW 1 Phule Khan, the seizure officer.

In Saiyad Mohd. Saiyad Umar Saiyed & ors. Vs. State of Gujarat (supra), the Hon'ble Supreme Court held that having regard to the object for which the provisions of Section 50 have been introduced into the NDPS Act and when the language thereof obliges the officer concerned to inform the person to be searched of his right to be searched in the presence of a Gazetted Officer or a Magistrate, there is no room for drawing a presumption under Section 114, illustration (e) of the Indian Evidence Act, 1872. By reason of Section 114 a court 'may presume the existence of any fact which it thinks likely to have

happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case.' It may presume "(e) that judicial and official acts have been regularly performed.' There is no room for such presumption because the possession of illicit articles under the NDPS Act has to be satisfactorily established before the Court. The fact of seizure thereof after a search has to be proved. When evidence of the search is given all that transpired in its connection must be stated. Very relevant in this behalf is the testimony of the officer conducting the search that he had informed the person to be searched that he was entitled to demand that the search be carried out in the presence of a Gazetted Officer or a Magistrate and that the person had not chosen to so demand. If no evidence to this effect is given the court must assume that the person to be searched was not informed of the protection the law gave him and must find that the possession of illicit articles under the NDPS Act was not established.

In the instant case, from the evidence, discussed here-in-above, it has been proved beyond reasonable doubt that vide notices EX.P/4 and EX.P/5, both the appellants have been informed that they are having a legal right to demand their search in the presence of a magistrate or a gazetted officer and in reply, both the appellants have chosen not to be searched in

the presence of a magistrate or a gazetted officer but gave their consent that they be searched by the seizure officer PW 1 Phule Khan. Thus, the decision in Saiyad Mohd. Saiyad Umar Saiyat & ors. Vs. State of Gujarat (supra) relied on by the learned counsel for the appellants is of no help in the facts and circumstances of the instant cases.

So far as Panch witnesses not supporting the prosecution case is concerned, in view of the recent decision of the Hon'ble Supreme Court in P.P.Fathima Vs. State of Kerala (supra), in my view, the prosecution case cannot be doubted only on this ground because the evidence of other witnesses like PW 1 Phule Khan, the seizure officer and other prosecution witnesses to the search and seizure, couple with recovery of huge quantity of contraband smack (heroin) from the appellants, including the secret information etc. In Bahadur Singh Vs. State of Madhya Pradesh & Anr. (supra), the Hon'ble Supreme Court held that there are serious discrepancies in recovery, seizure and deposit in the Malkhana and, therefore, held that the prosecution has failed to prove its case beyond all reasonable doubt against the appellant therein. Thus, the decisions relied on by the learned counsel for the appellants turn on their own facts and are of no help to the appellants as in the instant case, there is no discrepancy in search and seizure of the contraband smack (heroin) as also its deposit with the Malkhana.

Apart from the statement of PW 1 Phule Khan, the seizure officer, there are statements of PW 10 Satya Narain Ojha, PW 11 Dinesh Kumar and PW 13 Pradeep Singh, who accompanied PW 1 Phule Khan for search and seizure. From the statements of these witnesses, it has been established that PW 1 Phule Khan received a secret information at 11:00 AM on 8-3-2002, the information was in respect of both the appellants and the motorcycle seized from them, carrying the contraband smack (heroin). The information was written down as required under Section 42 of the NDPS Act and, sent to the higher officers, which is proved from the statements of PW1 Phule Khan and PW 12 Kamlesh Kumar, who carried the information to the higher officers. Thereafter PW 1 Phule Khan, the seizure officer, accompanied by the above-noticed witnesses, in a government jeep, along with investigation-kit, to the place disclosed in the secret information, took two Motbirs PW 2 Kana Jat and PW 4 Dharam Das Sindhi who were served with notice, they gave their consent to be the Motbirs. At about 11:30 AM, both the appellants were found coming on the motorcycle, the registration number whereof has been disclosed in the secret information, they were served with notices under Section 50 of the NDPS Act apprising them of their right to be searched in the presence of a magistrate or a gazetted officer or the seizure officer and the appellants gave their consent to be searched by the seizure

officer PW 1 Phule Khan. On personal search of appellant Ratan Lal, he was found in possession of contraband smack (heroin) weighing 406 grams and appellant Kishan Lal was found in possession of contraband smack (heroin) weighing 215 grams. Two samples of 30 grams each were taken from the contraband smack (heroin) seized from appellant Ratan Lal, as also two samples of 30 grams each were taken from the contraband smack (heroin) seized from appellant Kishan Lal. The samples as well as the remaining contraband smack (heroin) were sealed on the spot and marked. The memo of specimen seal was prepared. The motorcycle, on which the appellants came, was seized. Both the appellants were arrested on the spot and thereafter Panchnama and Parcha-Kayami were prepared. The material contraband smack (heroin) and the samples were deposited with the Malkhana Incharge PW 14 Umrao Mohammed, which was recorded in the Malkhana Register EX.P/27 at serial number 508 of the year 2002.

PW 14 Umrao Mohammed stated that on 8-3-2002, he was Head Constable and Malkhana Incharge of Police Station, Subhash Nagar, Bhilwara. PW 1 Phule Khan deposited the material contraband smack (heroin) marked A, A1 and A2 and the samples marked B, B1 and B2 in the sealed packets. The material contraband smack (heroin), samples, the motorcycle and the memo of specimen seal were deposited with him. On

18-3-2002, he gave the samples to PW 7 Prahlad Singh in the sealed condition to be taken to the Office of the Superintendent of Police for getting the forwarding letter prepared and then onward to the State Forensic Science Laboratory, Jaipur. PW 7 Prahlad Singh brought the receipt of the FSL after handing over the samples on 20-3-2002. The articles were handed over to FSL on 19-3-2002 vide receipt. He stated that as long as the material contraband smack (heroin) and the samples remained with him, they remained in the proper sealed condition and the seals thereon remained intact.

PW 7 Prahlad Singh stated that on 18-3-2002, he collected the samples from the Malkhana Incharge PW 14 Umrao Mohammed in Crime Case No. 76/2002, Police Station, Subhash Nagar, Bhilwara in a sealed-chit condition, took them to the Office of the Superintendent of Police, deposited the same with PW 8 Bhagwati Lal Constable in a sealed condition, got the forwarding letter EX.P/23 prepared, took the samples to FSL in sealed condition along with the forwarding letter and the other papers. He has proved the forwarding letter EX.P/23 of the Police Station addressed to the Superintendent of Polcie and the forwarding letter EX.P/24 written by the Superintendent of Police to the FSL. Both the samples were deposited by him with the FSL vide EX.P/25. He stated that as long as the samples remained with him, the seals thereon remained intact.

PW 8 Bhagwati Lal, a constable working at the Office of the Superintendent of Police, Bhilwara, stated that PW 7 Prahlad Singh brought samples for getting the forwarding letter prepared on 18-3-2002 in respect of Crime Report No. 76/2002, Police Station, Subhash Nagar; the samples were in a sealed-chit condition; he received the samples and other papers and thereafter prepared the forwarding letter EX.P/24 and handed over to PW 7 Prahlad Singh alongwith the samples in the sealed condition, which were deposited by PW 7 Prahlad Singh with the FSL vide EX.P/25. He has stated that as long as the samples remained with him, the seals thereon remained intact.

On the samples of contraband being analyzed by the State Forensic Science Laboratory vide EX.P/29, it was found that each of the packet marked A1 and B1 contained light brown coloured powdered substance along with small aggregates enclosed in separate polythene pouch in turn packed in metallic tin container. On micro-chemical examination, the sample contained in each of the packet marked A1 and B1 gave positive tests for presence of diacetylmorphine (Heroin). As per the FSL report EX.P/29, the samples were properly sealed bearing impressions which tallied with the specimen seal impression forwarded and the seals were intact.

From the evidence discussed here-in-above, it has been proved beyond reasonable doubt that appellant Ratan Lal

was found in possession of contraband smack (heroin) weighing 406 grams without there being any licence or permit, which is a commercial quantity as provided in the Notification S.O. 1055 (E) dated 19-10-2001 at Serial No.56, Column 6 of the Table. Appellant Kishan Lal was found in possession of contraband smack (heroin) weighing 215 grams without there being any licence or permit. It has also been proved that after the search and seizure, PW 1 Phule Khan handed over the investigation to PW 9 Ramesh Chand, the Incharge of Police Station, City Kotwali, Bhilwara, who further conducted the investigation and filed the investigation report (Challan) against both the appellants for the offences for which they have been charged. From the evidence discussed here-in-above, the mandatory provisions of Sections 42 and 50 of the NDPS Act have been fully complied with. The provision of Section 57 of the NDPS Act, which is not mandatory, has also been complied with.

On close scrutiny of the statements of the prosecution witnesses and the documents exhibited by the prosecution, I am of the view that the prosecution has proved the case against both the appellants beyond reasonable doubt and, therefore, the trial Court was justified in convicting appellant Ratan Lal for the offence under Section 8 read with Section 21(C) of the NDPS Act and appellant Kishan Lal for the offence under Section 8 read with Section 21 (B) of the NDPS

Act. In this view of the matter, I do not find any error in the judgment impugned passed by the trial Court convicting the appellants for the aforesaid offences.

So far as sentence awarded to appellant Ratan Lal is concerned, who was found in possession of contraband smack (heroin) weighing 406 grams which is a commercial quantity, the minimum sentence prescribed for the offence under Section 8 read with Section 21 (C) of the NDPS Act, where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years' rigorous imprisonment and a fine of Rs. 1,00,000/-, therefore, the sentence awarded by the trial Court to appellant Ratan Lal cannot be said to be erroneous.

So far as sentence of imprisonment and fine awarded to appellant Kishan Lal are concerned, he has been convicted for the offence under Section 8 read with Section 21 (B) of the NDPS Act as amended by the Amendment Act of 2001, which provides the sentence of rigorous imprisonment for a term which may extend to ten years and fine which may extend to Rs.1,00,000/-. The trial Court sentenced appellant Kishan Lal to rigorous imprisonment for nine years and a fine of Rs.80,000/-. Keeping in view the fact that the contraband smack (heroin) seized from appellant Kishan Lal was less than the commercial quantity and much less than the one recovered from appellant

Ratan Lal, in my view, the ends of justice would be met if the substantive sentence of rigorous imprisonment awarded to appellant Kishan Lal is reduced to seven years' rigorous imprisonment; however, the sentence of fine awarded to him is maintained.

Consequently, the appeal (No.324/2003) filed by appellant Ratan Lal is hereby dismissed. His conviction and sentence awarded by the trial Court are affirmed. The appeal filed by appellant Kishan Lal (No.213/2003) is partly allowed. While maintaining his conviction for the offence under Section 8 read with Section 21 (B) of the NDPS Act and the sentence of fine, the substantive sentence of imprisonment awarded to appellant Kishan Lal is reduced to seven years rigorous imprisonment.

(H.R. PANWAR), J.

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